

Appl. No. 09/883,554
Amdt. Dated 05/02/2005
Reply to Office Action of February 10, 2005

REMARKS/ARGUMENTS

This amendment is in response to an Office Action dated February 10, 2005.

In the Office Action, claims 10-18 were allowed. Claim 23 was objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form. Claim 23 has been placed into independent form and claims 20, 22, 24 and 25 have been amended to adjust claim dependency. Therefore, claim 23 and those claims dependent thereon are in condition for allowance.

Moreover, claims 19-21 have been rejected under 35 U.S.C. §112 (second paragraph) due to minor informalities. Claim 19 has been cancelled without prejudice and claims 20-21 have been amended to now depend on allowable claim 23. Hence, the outstanding §112 rejection as applied to claims 19-21 has been traversed based on the cancellation of claim 19 and change of dependency of claims 20 and 21. Withdrawal of the §112 rejection is respectfully requested.

Claims 8, 9, 19-22, 24 and 25 have been rejected under 35 U.S.C. §103(a). Claim 19 has been cancelled and claims 20-22, 24 and 25 have been revised to depend, directly or indirectly, from claim 23. With respect to claims 8-9, however, Applicants respectfully traverse the rejection because a *prima facie* case of obviousness has been established.

As the Examiner is aware, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See *MPEP* §2143; See also *In re Fine*, 873 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988).

More specifically, Frodigh (USP 5,726,978) does not describe or suggest any identification of at least one carrier of a plurality of carriers in a non-data bearing state by receiving a carrier map from a remotely located system, where the carrier map indicates which carriers are unreliable. Rather, Frodigh teaches substitution of subcarriers having low signal strength (C/I measurements) with unused subcarriers. In contrast, as set forth in claim 8, the claimed invention features a carrier map that identifies at least one carrier of a plurality of carriers as unreliable and subsequently modulates this unreliable carrier with random data.

In addition, in contrast to the teachings of Frodigh, which is directed to the substitution of one or more subcarriers based on low signal level quality (C/I) measurement results, the claimed invention is directed to modulation of the non-data bearing carrier with random data. The random modulated carriers are output from an output port of a multiplexer unit, where the output port is identified by the carrier map.

In light of the foregoing, Applicants respectfully request the Examiner to withdraw the outstanding §103(a) rejection.

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Conclusion

Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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Susan McFarlane

05/02/2005

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